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No. 189

# In the Supreme Court of the United States

OCTOBER TERM, 1944

THE CONNECTICUT LIGHT AND POWER COMPANY, PETITIONER

*v.*

FEDERAL POWER COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. III, 1170)* is reported in 141 F. (2d) 14. The Federal Power Commission's findings, opinion and orders

*The record in this case consists of both printed and unprinted material. The printed record (which was made an appendix to petitioner's brief below) is in three volumes, and will be cited herein as "R. I, II or III." The unprinted record, which was also filed with the court below and has been filed with this Court, consists of the transcript of the proceedings before the Commission (cited herein as "Tr.") and the exhibits (cited as "Ex.").

(R. I, 63–85) are reported in 44 P. U. R. (NS) 170.

## JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on February 28, 1944 (R. III, 1178). A petition for rehearing was denied on March 25, 1944 (R. III, 1195). The petition for a writ of certiorari was filed on June 23, 1944. The jurisdiction of this Court is invoked under Section 313 (b) of the Federal Power Act (49 Stat. 86, 16 U. S. C. 825*l*), and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Whether the Federal Power Commission was warranted in finding petitioner a "public utility" within the meaning of the Federal Power Act.

## STATUTE INVOLVED

The relevant provisions of the Federal Power Act of 1935 are set forth in the Appendix, *infra*, pp. 19–23.

## STATEMENT

On January 7, 1941, the Federal Power Commission issued an order (R. I, 48–52) directing petitioner to show cause "why it is not now, and has not been since August 26, 1935" (the effective date of the Federal Power Act), a "public utility" within the meaning of the Act, and why it had not complied with the Uniform System of Ac-

ecounts prescribed by the Commission for such public utilities, effective January 1, 1937, and the Commission's orders supplemental thereto (R. I, 35–36, 40–47). Following an extensive hearing, the Commission, on May 13, 1942, found (R. I, 63–82) that petitioner at all times since August 26, 1935, had been a "public utility" within the meaning of the Act, and directed petitioner to reclassify and keep its accounts in accordance with the Commission's Uniform System of Accounts (R. I, 83). A petition for rehearing (R. I, 7–33) was denied on June 23, 1942 (R. I, 84–85). On petition for review (R. I, 1–33), the court below affirmed the Commission's order (R. III, 1178).

The following facts shown by the record are undisputed:

Petitioner owns and operates an electric utility system in the State of Connecticut (R. I, 63, 86; Ex. 70). Until two days before the Federal Power Act became effective, on August 26, 1935, petitioner was a member of an interstate power pool, known as the Connecticut Valley Power Exchange[1] (R. I, 70; R. II, 296). Petitioner's

[1] The operations of this Exchange are described in *Hartford Electric Light Co. v. Federal Power Commission*, 131 F. (2d) 953 (C. C. A. 2), certiorari denied, 319 U. S. 741. In addition to The Hartford Electric Light Company and petitioner, the Exchange included Turners Falls Power and Electric Company (R. II, 294–295). The transmission facilities of The Connecticut Power Company, a non-member, were used in Exchange operations under a toll contract (R. III, 1090–1096).

main system was connected near New Britain, Connecticut, with the Hartford-Falls Village 66,000-volt double-circuit line ("C. P. 1 and C. P. 2 lines") of the Connecticut Power Company (R. III, 1113; Ex. 38; R. II, 295–297). This line interconnected at its east end, through a substation in Hartford, with the Hartford-Agawam line running northward to Massachusetts (R. I, 65; R. III, 1113; Ex. 38, R. II, 378–380, 394–396; R. III, 1119–1122),[3] and at its west end, in Falls Village, Connecticut, with a line extending to Poughkeepsie, New York (R. II, 278–279, 394; R. III, 1113, Ex. 38).[4] Over these lines, Central Hudson Gas and Electric Company and the members of the Connecticut Valley Power Exchange (including petitioner) interchanged energy among their systems in New York, Connecticut, and Massachusetts (R. I, 65–66; R. II, 276–279, 294–295).

In addition to the New Britain connection, petitioner maintained separate connections for taking energy from the C. P. 1 and C. P. 2 lines, to supply the major requirements (R. II, 397–402, 409, 473–474 of its East Hampton and Winsted districts, and the entire requirements (R. I, 68–69, 400–401) of its Bristol district. For its East Hampton

[3] Owned in Connecticut by The Connecticut Power Company and in Massachusetts by the Turners Falls Power & Electric Company (R. II, 396).

[4] Owned in Connecticut by The Connecticut Power Company and in New York by the Central Hudson Gas and Electric Company (R. II, 397).

district, petitioner's twelve mile 13,800-volt line took energy from the C. P. 1 and C. P. 2 lines (through intervening facilities of The Connecticut Power Company) at "pole 110" in Portland to petitioner's step-down substations in East Hampton, Colchester, and Leesville, Connecticut, where the voltage was reduced and the energy distributed over petitioner's lines serving those communities and adjacent areas (R. I, 66–67; R. II, 491–493, 409, 401–402, 473–474, 392–397, 231–233; Ex. 26). For its Winsted district, petitioner's facilities took energy from the C. P. 1 and C. P. 2 lines through intervening facilities of The Torrington Electric Light Company in Torrington, after the voltage had been stepped-down to 2,300 volts (R. I. 67; R. II, 394–395, 397, 399–400, 410, Exs. 27, 79, 80A). Such facilities of petitioner included a step-up substation at Torrington, a ten-mile 27,600 volt, double-circuit line, and a step-down substation at Winsted where the voltage was reduced to 4,600 volts and the energy distributed over petitioner's lines serving Winsted and environs (R. I. 68; R. II, 494; Exs. 79, 80A, 27, 60). At Bristol, petitioner's facilities included an outdoor step-down substation with transformers and appurtenant facilities (including a synchronous condenser), and lines from petitioner's substation to supply consumers in Bristol and environs (R. I, 69; R. II, 493, 519). Energy was delivered at 66,000 volts over a short tap

from the C. P. 1 and C. P. 2 lines to petitioner's substation at which the voltage was stepped-down to 4,600 and 13,800 volts (R. I, 65, 68–69; R. II, 410, 493, 519–529). The synchronous condenser was operated to maintain the "power factor" (R. I, 69, 75; R. II, 228–230; 519–520, 528–529) required by The Connecticut Power Company under its power-supply contract with petitioner (R. III, 1040).

Considerable evidence was introduced for the Commission at the hearing, showing that Massachusetts energy flowed frequently, for substantial periods and in substantial amounts, over the C. P. 1 and C. P. 2 lines, alone or in conjunction with Connecticut energy, to petitioner's facilities in its East Hampton, Winsted and Bristol districts (R. II, 388–474, 584–590, 474–543; R. III, 710–712; Exs. 61–62; R. III, 1119–1120; R. I, 279–280, 293–294).

Apart from the facilities taking energy from the C. P. 1 and C. P. 2 lines, petitioner's main system was connected in the southeastern corner of Connecticut with the facilities of the Borough of Groton, and petitioner sold energy generated at its Montville plant to the Borough which resold it in part (with petitioner's knowledge) to a company serving the entire requirements of Fishers Island, New York (R. I, 74; R. III, 640, 642–643, 737; R. II, 357, 361, 462–464). Such energy was transmitted over petitioner's 33,000-volt double-circuit line ex-

tending from its step-up substation at Montville to a substation at Groton Long Point, where the voltage was reduced to 6,900 volts and the energy conveyed to Fishers Island, New York, over facilities of the Borough and the company serving that island[5] (R. I, 64–65, 74, 77; R. III, 1141, 1049–1051; R. II, 532–542; 180–207).

Seeking, as the circumstances clearly indicate, to avoid regulation by the Federal Power Commission (R. III, 359–363, 145–148),[6] petitioner, on August 24, 1935, two days before the Act took effect, severed the connection of its lines at New Britain with the C. P. 1 and C. P. 2 lines.[7]

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[5] On the basis of these operations the company serving Fishers Island admitted its "public utility" status (R. III, 1048–1049; see Commission Opinion R. I, 78).

[6] Proponents of the Act, by way of illustrating the accounting abuses sought to be remedied by the Act, specifically cited, during the debates in the House, write-ups aggregating $21,000,000 in the accounts of petitioner and two companies (Northern Connecticut Power Company and Connecticut Electric Service Company) since merged into petitioner (Moody's Public Utilities, 1942, p. 1151; *ibid.* 1936, p. 2549). See 79 Cong. Rec. 10421–10424. The method adopted by the Commission for eliminating write-ups is illustrated by *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119.

[7] Petitioner severed this interconnection on the Saturday afternoon before the Monday on which the Act was approved by the President (R. II, 295–297). The Connecticut Power Company's lines were severed at the state boundary the next day, Sunday, August 25 (R. III, 1105–1106; R. II, 330–331). When satisfied that this had been done, petitioner reconnected at New Britain and thereafter engaged in intrastate pooling operations with The Hartford Electric Light Company (R. II, 297–299, 386). To avoid losing $100,000 a

For similar reasons petitioner, in June 1939, severed its East Hampton connection (R. I, 66, 73; R. II, 361–363; R. III, 764–765), in June 1941 discontinued taking energy for its Winsted district supplied by The Connecticut Power Company at Torrington (R. II, 145–148, 138), and in February 1941 brought about the termination of the sale of energy by the Borough of Groton to Fishers Island (R. I, 107–115; R. II, 178–179, 195–197; R. III, 1052–1053, 1145–1149). However, presumably due to contractual commitments and the difficulty of providing an alternative supply (R. II, 371),* Bristol was not disconnected and is still supplied with energy from the C. P. 1 and C. P. 2 lines (R. I, 69, 74; R. II, 369–371).

The Commission found that certain designated facilities of petitioner in its East Hampton and Winsted districts, prior to the disconnections, were "facilities for the transmission of electric

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year (R. III, 1108), the interstate Exchange resumed operations on May 29, 1936, without petitioner, which had again severed its New Britain interconnection (R. II, 300). The members of the Exchange thereafter were The Connecticut Power Company, the Turners Falls Power & Electric Company, and the New England Power Company (R. III, 1084–1085). These companies do not contest their "public utility" status (R. II, 258; *Western Massachusetts Electric Company*, F. P. C. Op. No. 85, 46 P. U. R. (NS) 215, 217; *Connecticut River Power Company, et al.*, 2 F. P. C. 539; *New England Power Company, et al.*, 2 F. P. C. 612).

* Petitioner's contract to purchase its power requirements for Bristol from The Connecticut Power Company is not terminable until January 1, 1947 (R. III, 1042).

energy in interstate commerce" (R. I, 67–68). It further found that petitioner's facilities for supplying Groton (until sales to Fishers Island were discontinued on February 28, 1941) were facilities for both the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce (R. I, 64–65). Finally, the Commission found that petitioner's synchronous condenser, step-down transformers and appurtenant facilities at Bristol "were and are facilities for the transmission of electric energy in interstate commerce" (R. I, 69). Upon the basis of these findings the Commission concluded that petitioner "was and continues to be * * * a public utility" under the Act (R. I, 65, 67, 68, 69).

## ARGUMENT

The court below properly affirmed the Commission's finding that petitioner is a "public utility" within the meaning of the Federal Power Act, and hence subject to the accounting requirements prescribed by the Commission pursuant to Section 301 (a) of the Act. This decision correctly applies the principles established in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, and *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. (2d) 953 (C. C. A. 2), certiorari denied 319 U. S. 741. No conflict with any decision is presented.

1. Section 313 (b) of the Act provides that "the finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." The court below, determining that there was substantial evidence, sustained the Commission's findings (R. I, 66, 68, 69, 79–81) that out-of-state energy was received over petitioner's facilities in its East Hampton, Bristol and Winsted districts,[9] and that petitioner owned and operated "facilities for the transmission of electric energy in interstate commerce."[10] Petitioner argues that the court below erred in refusing to inquire whether the weight of the evidence supported the Commission's findings. (Pet. 31–32). We submit that this contention is without merit. The "substantial evidence" limitation upon judicial review extends to the Commission's findings of jurisdictional facts, such as interstate movement

[9] Since both the Commission and the court below relied, not upon the connections between petitioner's facilities and the C. P. 1 and C. P. 2 lines, but upon the movement of out-of-state energy over petitioner's facilities, there is obviously no validity to the asserted conflict (Pet. 15) between the decision of the court below and the statement in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 72, that "mere connection determines nothing."

[10] The court below also sustained the Commission's findings (R. I, 64–65) that petitioner's facilities for supplying energy to Fishers Island, New York, were facilities for the transmission and sale at wholesale of electric energy in interstate commerce. While we believe this holding was proper, we find it unnecessary to discuss this aspect of the case. As we show herein, petitioner's ownership and operation of facilities receiving energy from the C. P. 1 and C. P. 2 lines afford an adequate basis for the Commission's jurisdiction.

of energy. In *Jersey Central Power & Light Company* v. *Federal Power Commission*, 319 U. S. 61, 67, this Court upheld, because supported by substantial evidence, a finding by the Commission that certain electric facilities located wholly within one state were utilized for the interstate transmission of electric energy. Jurisdictional findings made under other statutes have been similarly treated. *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1; *Shields* v. *Utah Idaho R. Co.*, 305 U. S. 177, 186; *Gray* v. *Powell*, 314 U. S. 402; *Sunshine Coal Co.* v. *Adkins*, 310 U. S. 381, 390, 400; *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 145–146; cf. *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 130–131, and cases cited.

Petitioner does not here attack the substantiality of the evidence supporting the Commission's findings (see Specification of Errors No. 6, Pet. 12, 31–34). As the lower court properly held, there was substantial evidence (R. II, 388–474, 584–590, 474–543; R. III, 710–712; Exs. 61, 62; R. III, 1119–1120; R. II, 279–280, 293–294) to support the Commission's findings (R. I, 66, 68, 69, 79–81) that Massachusetts energy moved over petitoner's facilities.[11]

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[11] Properly qualified staff engineers for the Commission (R. II, 474–479, 388–389, 560, Tr. 1711) after tracing the energy flow from recorded meter readings by methods similar to those employed in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 65–67, testified that in their expert opinion substantial amounts of elec-

2. Petitioner contends that, regardless of whether Massachusetts energy was received over petitioner's facilities at East Hampton, Bristol and Winsted, none of "these facilities were 'facilities for the transmission of electric energy in interstate commerce,' within the meaning of the Act," since "transmission in interstate commerce ended at least as soon as the energy reached the facilities of Petitioner." (Pet. 22–23).

It is difficult to determine from the petition whether this contention is intended to deny that petitioner owns and operates facilities for "trans-

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tric energy generated in Massachusetts and flowing over the Hartford-Agawam line entered the South Meadow substation, and was supplied over the C. P. 1 and C. P. 2 lines to petitioner's facilities at its East Hampton, Bristol, and Winsted districts (R. II, 388–474, 584–590, 474–543; R. III, 710–712; Exs. 61, 62). A study which did not purport to be exhaustive showed that there were 601 days between January 1, 1937, and May 26, 1941 (321 plus 280, R. II, 584, 442–443, 449, Ex. 62), during which electric energy from Massachusetts carried or helped carry the Bristol load continuously for one or more hours (R. II, 454–456, 584, 546, 549, 459). There was one instance of Massachusetts energy being supplied to all points on the C. P. 1 and C. P. 2 interstate trunk line for 45 hours consecutively, during 39 of which all loads on the line were carried by Massachusetts generators, and no Connecticut energy whatever was metered (R. II, 465–467). For two or more consecutive hours on 8 of the 21 days selected for illustrative purposes, Massachusetts energy alone supplied all loads between Hartford and Falls Village on the C. P. 1 and C. P. 2 lines (R. II, 410–412, 428–429, Ex. 61; R. II, 454–455). The testimony of petitioner's experts did not show that Massachusetts energy actually did not reach petitioner's facilities, but merely that such a flow cannot be proved with absolute scientific conclusiveness (R. II, 773–774, 776, 783, 804–817).

mission" of electric energy, as well as to deny that its facilities are for transmission "in interstate commerce." Any such contention would clearly be untenable. As the Commission found upon the basis of substantial expert testimony, "facilities for transmission of electric energy" necessarily include not only step-up transformers and lines leading therefrom, but also step-down transformers and appurtenant facilities (R. I, 75; R. II, 528–529; R. III, 995–997; R. II, 492–493, 502–504, 520, 531, 533–534). The interdependence of such facilities, which are all essential to the economic movement of electric energy in bulk over long distances, renders any attempt at segregation arbitrary and unrealistic (R. II, 528–529, 518–519).

Section 201 (c) of the Act, which is not referred to in the petition, specifically provides that for purposes of the Act "electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof." Since, as shown above, petitioner owns and operates facilities for "the transmission of electric energy," and since such energy includes energy transmitted from Massachusetts and consumed in Connecticut, petitioner owns and operates facilities for "the transmission of electric energy in interstate commerce" within the meaning of the Act. A contrary conclusion would be inconsistent with the decision of this Court in *Jersey Central Power & Light Co.* v. *Federal*

*Power Commission*, 319 U. S. 61, 72, where transmission facilities at the sending end of an integrated and instantaneous process of transmission of electric energy from one state to another were held to be subject to the Act, even though the facilities were wholly located in one state. No reason exists for treating differently transmission facilities at the receiving end of such a process of transmission. Cf. *Illinois Natural Gas Co.* v. *Public Service Co.*, 314 U. S. 498."

Petitioner also urges (Pet. 24) that the passage of electric energy through transformers before delivery to petitioner's facilities at the East Hampton and Winsted districts terminated the interstate journey of the energy. This argument seems to concede that the contrary is true at Bristol, since petitioner there owns the transformers, which reduce the voltage of the energy taken from the 66,000 volt C. P. 1 and C. P. 2 lines. In any

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" The authorities cited by petitioner, dealing with the power of the state to tax or regulate matters allegedly of an interstate nature (Pet. 22–23), are not pertinent to determine either the power of Congress to regulate petitioner's activities or the intention to do so under the Act. *United States* v. *South-Eastern Underwriters' Association*, No. 554, last Term, decided June 5, 1944; *Wickard* v. *Filburn*, 317 U. S. 111, 121–122; *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 311; *Stafford* v. *Wallace*, 258 U. S. 495, 525–528. As this Court pointed out in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 74–75, Section 301 (a) of the Act empowering the Commission to control accounting practices regulates "matters obviously subject to state regulation."

event, petitioner's contention is unsupported by any language in the Act, and was rejected by the Circuit Court of Appeals for the Second Circuit in *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. (2d) 953, 960, certiorari denied 319 U. S. 741. See also *Illinois Natural Gas Co.* v. *Public Service Co.*, 314 U. S. 498, 504."

3. Petitioner argues that even if certain of its facilities in East Hampton, Winsted and Bristol are facilities for the transmission of electric energy in interstate commerce, they are "used in local distribution" and therefore exempted from the Commission's jurisdiction by the "but clause" in Section 201 (b) of the Act." This argument misconceives the purpose of the "but clause." Both the court below (R. III, 1174–1175), and the Circuit Court of Appeals for

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[10] Petitioner's reliance upon the concluding phrase of the declaration of policy in Section 201 (a) of the Act ("* * * such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States") is of no avail, as this Court has held in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 71–72.

[11] "* * * The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, *but shall not have jurisdiction, except as specifically provided in this Part and the Part next following*, over facilities used for the generation of electric energy or *over facilities used in local distribution* or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." ("but clause" italicized in part.)

the Second Circuit in *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. (2d) 953, 961–962, certiorari denied, 319 U. S. 741, have held that the "but clause" does not restrict the expressly granted jurisdiction of the Commission over "all facilities" for transmission of electric energy in interstate commerce, the ownership or operation of which renders a company a "public utility" subject to the Act. On the contrary, these courts have held that the "but clause" is a negatively worded confirmation of the Commission's authority, to the extent "specifically provided" in the Act,[15] over facilities "used in local distribution," etc., when such facilities are owned by a "public utility." See 131 F. (2d) at 961–962; R. III, 1175.[16] This construction is supported by the legislative history of the Act. The statement of the House conferees accompanying

[15] E. g., issuance of Securities (Sec. 204 (a)); investigation of costs and depreciation (Sec. 208); records and accounts (Sec. 301 (a)).

[16] It is illogical to construe the "but clause" as petitioner contends, i. e., as carving out exceptions from the Commission's jurisdiction over "all facilities" for transmission or sale at wholesale of electric energy in *interstate* commerce. For, if that were the intention of the "but clause," it would be meaningless to exempt jurisdiction over facilities "used *only* for the transmission * * * in *intrastate* commerce." (Italics supplied.) The structure of the clause rather indicates, as the Circuit Court of Appeals for the Second Circuit held, that it specifies *additional* categories of facilities which under certain circumstances (where specifically so provided in the Act) come under the authority of the Commission.

the Conference Report, in referring to that part of the "but clause" which reads "except as specifically provided etc.," described it as a "clarifying phrase added to remove any doubt as to the Commission's jurisdiction over facilities used for the generation and local distribution of electric energy to the extent provided in other sections of this part and the part next following." H. Rep. No. 1903 (74th Cong., 1st Sess.), p. 74. It is noteworthy, also, that Congress did not adopt a proposal by the Solicitor of the National Association of Railroad and Utility Commissioners specifically to exempt companies purchasing interstate energy solely for local distribution. Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), p. 1661; Hearings, Senate Committee on Interstate Commerce on S. 1725 (74th Cong., 1st Sess.), p. 748."

CONCLUSION

The decision below is correct, and there is no conflict of authorities. Petitioner advances substantially the same contentions as those considered

[11] There is clearly no merit in petitioner's final argument (Pet. 40-43) that the court below improperly characterized petitioner's system as "essentially interstate." The court's description of petitioner's system was not advanced as an affirmative ground for jurisdiction, but merely to dispose of petitioner's "de minimis" argument, particularly with reference to the Groton facilities, and as we indicated earlier, *supra*, p. 10, n. 10, it is unnecessary to rely upon the Groton facilities to support the decision below. However, we believe that the court's characterization of petitioner's system as "essentially interstate" was apt.

and rejected in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61 and *Hartford Electric Light Company* v. *Federal Power Commission*, 131 F. (2d) 953 (C. C. A. 2), certiorari denied 319 U. S. 741. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1944.

# APPENDIX

## THE FEDERAL POWER ACT OF 1935

Section 201 (49 Stat. 847, 16 U. S. C. 824) provides as follows:

> SECTION 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary to the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.
>
> (b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifi-

cally provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

Section 204 (a) (49 Stat. 850, 16 U. S. C. 824c) provides as follows:

> SEC. 204. (a) No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. The provisions of this section shall be effective six months after this Part takes effect.

Section 208 (49 Stat. 853, 16 U. S. C. 824g) provides as follows:

> SEC. 208. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property.

(b) Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

Section 301 (a) (49 Stat. 854, 16 U. S. C. 825) provides as follows:

SEC. 301. (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting

entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

Section 313 (b) (49 Stat. 860, 16 U. S. C. 825*l* (b) provides, in part, as follows:

SEC. 313. (b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceding may obtain a review of such order * * * in the United States Court of Appeals for the District of Columbia * * *. * * * The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. * * *

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